

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0435

HOUSE BILL NO. 1119

Introduced by: Representatives Rounds, Cutler, Gillespie, Hargens, Hennies, O'Brien, and
Rave and Senators Moore, Gray, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to repeal certain mandatory minimum sentences for driving
2 under the influence, to expand those substances under which a person may be found to be
3 under the influence, and to revise certain driving under the influence provisions for clarity
4 and consistency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 32-23-1 be amended to read as follows:

7 32-23-1. No person may drive or be in actual physical control of any vehicle while:

- 8 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown
9 by chemical analysis of that person's breath, blood, or other bodily substance;
- 10 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
11 substance not obtained pursuant to a valid prescription, or any combination of an
12 alcoholic beverage, marijuana, or such controlled drug or substance;
- 13 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained
14 pursuant to a valid prescription, or any other substance, to a degree which renders the
15 person incapable of safely driving; ~~or~~



(4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Section 2. That § 32-23-1.1 be amended to read as follows:

32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-1 and that such violation occurred prior to or immediately following such traffic accident.

Section 3. That § 32-23-1.2 be amended to read as follows:

32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

Section 4. That § 32-23-1.3 be repealed.

~~32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.~~

Section 5. That § 32-23-2 be amended to read as follows:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty

1 of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less
2 than thirty days. However, the court may in its discretion issue an order upon proof of financial
3 responsibility, pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for
4 purposes of ~~the person's~~ employment, attendance at school, or attendance at ~~court-ordered~~
5 counseling programs ~~during the hours of the day and the days of the week as set forth in the~~
6 ~~order~~. The court may also order the revocation of the defendant's driving privilege for a further
7 period not to exceed one year or restrict the privilege in such manner as it sees fit for a period
8 not to exceed one year.

9 Section 6. That § 32-23-2.1 be amended to read as follows:

10 32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a
11 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the
12 penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine
13 if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation
14 shall be paid by the defendant.

15 Section 7. That § 32-23-3 be amended to read as follows:

16 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is
17 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
18 revoke the defendant's driving privilege for a period of not less than one year. However, upon
19 the successful completion of a court-approved ~~alcohol treatment~~ chemical dependency program,
20 and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person
21 to drive for the ~~purpose~~ purposes of employment and may restrict the privilege by the imposition
22 of such conditions as the court sees fit. If such person is convicted of driving without a license
23 during that period, the person shall be sentenced to the county jail for not less than three days,
24 ~~which sentence may not be suspended,~~ attendance at school, or attendance at counseling

1 programs.

2 Section 8. That § 32-23-4 be amended to read as follows:

3 32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty
4 of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the
5 defendant's driving privileges for such period of time as may be determined by the court, but in
6 no event less than one year from the date sentence is imposed or one year from the date of
7 discharge from incarceration, whichever is later. ~~If the person is convicted of driving without~~
8 ~~a license during that period, he shall be sentenced to the county jail for not less than ten days,~~
9 ~~which sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains
10 jurisdiction to modify the conditions of the license revocation for the term of such revocation.
11 Upon the successful completion of a court-approved chemical dependency counseling program,
12 and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person
13 to operate a vehicle for the purposes of employment, attendance at school, or attendance at
14 counseling programs.

15 Section 9. That § 32-23-4.3 be amended to read as follows:

16 32-23-4.3. The plea and election of method of trial by the accused shall be first taken only
17 on the first part of the information described in § 32-23-4.2 but before a plea is made the
18 accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second
19 part. There shall be entered in the minutes of the court the time and place when and where the
20 judge so informed the accused, and like entry thereof shall be made in the judgment.

21 Section 10. That § 32-23-4.4 be amended to read as follows:

22 32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2
23 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon
24 proceeded with, and until such time no information as to the second part of the information ~~shall~~

1 ~~may~~ be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part
2 of the information, such trial may be had to the same or another jury as the court may direct.

3 Section 11. That § 32-23-4.6 be amended to read as follows:

4 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person
5 has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5
6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's
7 driving privileges for such period of time as may be determined by the court, but in no event less
8 than two years from the date sentence is imposed or two years from the date of discharge from
9 incarceration, whichever is later. ~~If the person is convicted of driving without a license during~~
10 ~~that period, the person shall be sentenced to the county jail for not less than twenty days, which~~
11 ~~sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains jurisdiction to
12 modify the conditions of the license revocation for the term of such revocation. Upon the
13 successful completion of a court-approved chemical dependency counseling program, and proof
14 of financial responsibility pursuant to § 32-35-43.1, the court may permit the person to operate
15 a vehicle for the purposes of employment, attendance at school, or attendance at counseling
16 programs.

17 Section 12. That § 32-23-4.7 be amended to read as follows:

18 32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent
19 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,
20 the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall
21 unconditionally revoke the defendant's driving privileges for such period of time as may be
22 determined by the court, but in no event less than two years from the date sentence is imposed
23 or two years from the date of discharge from incarceration, whichever is later. ~~If the person is~~
24 ~~convicted of driving without a license during that period, the person shall be sentenced to the~~

1 ~~county jail for not less than twenty days, which sentence may not be suspended.~~
2 Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the
3 license revocation for the term of such revocation. Upon the successful completion of a court-
4 approved chemical dependency counseling program, and proof of financial responsibility
5 pursuant to § 32-35-43.1, the court may permit the person to operate a vehicle for the purposes
6 of employment, attendance at school, or attendance at counseling programs.

7 Section 13. That § 32-23-6 be amended to read as follows:

8 32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been
9 ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall is not constitute~~ a defense
10 against any charge of violating ~~said section~~ § 32-23-1.

11 Section 14. That § 32-23-7 be amended to read as follows:

12 32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle
13 while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41,
14 or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged
15 as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives
16 rise to the following presumptions:

- 17 (1) If there was at that time five hundredths percent or less by weight of alcohol in the
18 defendant's blood, it is presumed that the defendant was not under the influence of
19 ~~intoxicating liquor~~ an alcoholic beverage;
- 20 (2) If there was at that time in excess of five hundredths percent but less than eight
21 hundredths percent by weight of alcohol in the defendant's blood, such fact does not
22 give rise to any presumption that the defendant was or was not under the influence
23 of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with
24 other competent evidence in determining the guilt or innocence of the defendant;

1 (3) If there was at that time eight hundredths percent or more by weight of alcohol in the
2 defendant's blood, it is presumed that the defendant was under the influence of
3 ~~intoxicating liquor~~ an alcoholic beverage.

4 Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0
5 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

6 Section 15. That § 32-23-8 be amended to read as follows:

7 32-23-8. The provisions of § 32-23-7 ~~shall~~ may not be construed as limiting the introduction
8 of any other competent evidence bearing upon the question whether or not the defendant was
9 under the influence of ~~intoxicating liquor~~ an alcoholic beverage.